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May 6, 2013

BY ELECTRONIC DELIVERY

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Progeny LMS, LLC
Permitted Oral *Ex Parte* Presentation
WT Docket No. 11-49

Dear Ms. Dortch:

On May 6, 2013, Gary Parsons, CEO of Progeny LMS, LLC ("Progeny"), and the undersigned, met with Commissioner Mignon Clyburn and her legal advisor, Louis Peraertz. The parties discussed the substantial outpouring of interest and support that has been expressed by the public safety community, by disability organizations, and by other public policy leaders in Progeny's E911 wireless location service following the release of indoor location accuracy tests that were conducted by Working Group 3 of the Commission's Communications Safety Reliability and Interoperability Council ("CSRIC").

The parties also discussed the comprehensive spectrum sharing tests that have been conducted on Progeny's network, both by an independent third party and jointly with major manufacturers and users of Part 15 devices. The multiple rounds of spectrum sharing tests that have been conducted during the past 18 months, combined with Progeny's ongoing operations for more than three years in the San Francisco Bay Area and for much of the past year in 39 other major economic areas has more than adequately demonstrated that its location service can coexist successfully in the 902-928 MHz band with other authorized spectrum users.

To provide additional assurance that Progeny will operate on a shared basis with other spectrum users in the upper portion of the 902-928 MHz band, Progeny outlined certain spectrum etiquette measures that it is willing to undertake in the unlikely event of unacceptable levels of interference to unlicensed Part 15 devices or harmful interference to operators of non-

multilateration ("NM-LMS") networks used for automatic toll collection. With respect to these latter spectrum users, Progeny noted that the toll collection industry has standardized its operations with a center frequency of 915 MHz, which is considerably below the spectrum utilized by Progeny for its position location service and therefore no possibility exists that Progeny's service could cause harmful interference to the operations of automatic toll systems. Nevertheless, in order to address any concerns that might exist, Progeny offers the following assurances:

- Progeny will provide regular reports (every six months) to the FCC on the status of its build out in each Economic Area.
- Progeny will also provide regular reports (every six months) on any complaints of unacceptable levels of interference to unlicensed devices or harmful interference to NM-LMS networks and the steps that Progeny is taking (or has taken) to address these complaints.
- Progeny will create a website and toll-free help desk to enable Part 15 device users and NM-LMS licensees to notify Progeny and seek assistance in investigating and mitigating potential interference issues.
- In the unlikely event of unacceptable levels of interference to Part 15 devices or harmful interference to NM-LMS systems in a particular location, Progeny will work cooperatively with the affected parties to mitigate the interference including potentially relocating M-LMS beacons (either horizontally, vertically, or to an entirely different location), substituting or modifying beacon antennas, or modifying antenna patterns, antenna heights, transmitter slot assignments, duty cycles, or a combination of the above.
- As Progeny has previously indicated, Progeny will also refrain from placing M-LMS beacons on the same towers as pre-existing Part 15 receivers.
- In the event Progeny constructs beacons in rural areas, Progeny will work directly with any WISP network operators utilizing the 902-928 MHz band in those areas in order to ensure that any interference that results to WISP networks is minimized and does not preclude the continued provision of wireless broadband services to their customers.
- Finally, in the event NM-LMS licensees are utilizing the 919.75-921.75 MHz band, which is allocated to both services on a co-primary basis, Progeny will work with NM-LMS licensees to ensure the cooperative and shared use of the spectrum.

The Progeny representatives also emphasized the need for the Commission to address Progeny's compliance with its spectrum sharing obligations in an expedited manner. Major participants in the wireless communications industry, including wireless carriers, GPS chipset manufacturers, and handset manufacturers, have expressed their intent to include Progeny's software in the specifications for their next generation of wireless devices, making Progeny's location service widely available to consumers. These same wireless industry participants, however, have expressed the need for regulatory certainty regarding Progeny's ability to provide

commercial service before they are willing to commit to Progeny's service and incorporate Progeny's technology into their upcoming chips and equipment specifications. These wireless industry leaders are likely to view any further delay in the authorization of Progeny to begin providing commercial service as an indication that unlicensed spectrum users can prevent the enforcement of longstanding rules requiring the shared use of the 902-928 MHz band with primary licensees.

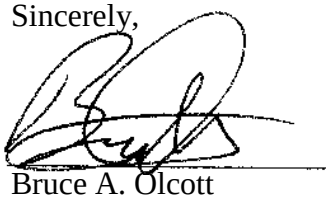
Progeny has expended substantial sums in constructing its network in the 40 largest economic areas of the country, and the continued ongoing operation of these networks on a national basis without the ability to serve customers represents a significant economic drain on the company and denies a major public safety benefit to the public. The potential inability for Progeny to commercialize its location service would be a tremendous detriment to public safety.

As emergency first responders have clearly indicated, Progeny's indoor location service is critically needed to facilitate the prompt location of wireless callers to E911 emergency services. Progeny's service can also be used to locate downed emergency first responders in dangerous environments such as large burning buildings. The Commission itself has said that it considers "indoor location accuracy to be a significant public safety concern that requires development of indoor technical solutions and testing methodologies to verify the effectiveness of such solutions."[1]

Taking into account the technical merits of the test results, the significant public interest benefits of Progeny's service, Progeny's assurance that it will work with other spectrum users on an ongoing basis, and the express desire of major participants in the wireless industry to move forward quickly with the implementation of Progeny's life-critical location service, the Commission should conclude that the public interest would be well served by immediately authorizing Progeny to launch its highly accurate location service on a commercial basis so that consumers and the public safety community can begin to enjoy its potential lifesaving benefits.

Thank you for your attention to this matter. Please contact the undersigned if you have any questions.

Sincerely,



Bruce A. Olcott
Counsel to Progeny LMS, LLC

[1] Amending the Definition of Interconnected VoIP Service in Section 9.3 of the Commission's Rules, GN Docket No. 11-117, Wireless E911 Location Accuracy Requirements, PS Docket No. 07-114, E911 Requirements for IP-Enabled Service Providers, *Notice of Proposed Rulemaking, Third Report and Order, and Second Further Notice of Proposed Rulemaking*, FCC 11-107, ¶ 86 (Jul 13, 2011).